

Reapportionment Politics

The History of Redistricting
in the 50 States

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and STUART ANDERSON
Editors



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EXHIBIT A

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THE EDITORS

This volume was brought together by three scholars with unique practical experience in redistricting politics.

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INTRODUCTION

Leroy Hardy
Alan Heslop
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In a great many of the 50 states, the redistricting of congressional and state legislative seats is presently a burning public issue. In the elections of 1980, the national and state party organizations placed special emphasis on winning gubernatorial races and state legislative majorities in an effort to control (or at least to influence) the vitally important redistrictings of the eighties. In a few states, the politics of redistricting has already been blamed for the harsh battles that have occurred over legislative leadership positions. Since the election of November 1980, the electronic and print media have devoted increasing attention to the background of the reapportionment and redistricting story to provide the public with essential information on this most political of political activities.

The essays in this volume, produced through the cooperation of some 58 researchers from across the United States, are intended to increase public awareness of how redistricting has been performed historically in each of the 50 states and how the redistrictings of the 1980s are likely to take shape. (Most of the essays were written either in the fall of 1980 or very early in 1981. As an unfortunate but unavoidable consequence, some of the speculative judgments on the redistrictings of the 1980s may be out of date at the time of publication. However, this detracts only slightly from the overall value of the essays.) The editors decided that a state-by-state survey was necessary because, despite the quest of modern scholars for a sphere of comparative state politics, each state of the Union remains essentially its own political universe. In an effort to develop fully the unique circumstances of each state, most of the contributors to this volume have concentrated their attention on the redistricting of state legislatures rather than on detailing the story of congressional redistricting in individual states. (The notable exception is Marc Eichen, whose contribution on redistricting in Massachusetts deals solely with the problem of redrawing the lines for congressional seats.) It is hoped that the various essays presented here will make it easier for scholars to draw broad generalizations about the redistricting process in the United States while remaining mindful of the great diversity of redistricting history and practice in the individual states. A careful reading of the 50 essays presented here will yield a wealth of information about redistricting in the separate states and about the impact of redistricting on American politics at many levels.

The Courts and the "Reapportionment Revolution"

Redistricting has been the source of great political controversy in the United States since the judicially imposed "reapportionment revolution" of the 1960s. Beginning in 1962, the U.S. Supreme Court assumed jurisdiction in cases involving

malapportionment of legislative seats, and in the process popularized the concept of "one man-one vote." The Supreme Court decisions that held equal population to be the basis for allocating state legislative and congressional seats mark a watershed in the theory and practice of representative government in the United States. Prior to these decisions, population had been one basis for apportionment, but land units (pieces of territory such as counties or townships) had served as another.

The proper weight that should be given to population or to land in apportionment had long troubled representative governments. In England, the "rotten borough" became an issue of controversy as early as the seventeenth century (the classic example was Old Sarum, a medieval town that had lost its population but not its parliamentary representatives). In America, the colonies used both population and land units as bases for apportionment. Controversies arose, even then, over the population inequities of land-based systems. Thomas Jefferson, for example, sharply criticized Virginia's county-based system for apportioning seats in the colonial assembly; he noted that while the lawmaker from the smallest county represented only 951 voters, the legislator from the largest county spoke for over 22,000. The Northwest Ordinance of 1787 established a population basis for the apportionment of territorial legislative seats ("one for every 500 free male inhabitants"); but the U.S. Constitution, guaranteeing two U.S. senators and one member of the House of Representatives to each state regardless of population, returned to a partly land-based system.

After 1787, state legislatures differed widely in apportionment practices. A majority of the states admitted to the Union employed population as the basis for apportionment; but several states followed the "federal" plan of basing one house on population and the other on land units; the others, while employing population as the principal basis for apportionment, modified population-based representation with requirements that each county have a minimum of one representative or that no county have more than a specified maximum number of representatives.

In the first half of the twentieth century, land-based systems of representation came under increasing criticism as mass movements of population and the growth of great industrial centers produced ever greater population disparities among counties and other local electoral units within the states. Yet, state legislators, perhaps because they owed their election to the existent system, were often unwilling to reapportion. Indeed, in several states, rurally dominated legislatures sought to perpetuate themselves by changing over to land-based apportionment schemes or by freezing existing plans into law.

The stalemate between the established powers protected by the apportionment formulae and the newer, urban-based groups and interests came to a crisis of sorts after the 1920 census, which reported for the first time that a majority of Americans were residing in urban areas. For the only time in American history, Congress refused in the 1920s to approve a reapportionment of congressional seats. And, following suit, the majority of state legislatures violated provisions in their own state constitutions and left the existing state legislative and congressional district lines in place. As long as apportionment decisions remained in the hands of malapportioned legislatures, it seemed, the system was largely immune to change.

Initially, the courts remained aloof and repeatedly avoided involvement in the political maneuvering that surrounded the redistricting and reapportionment controversy. As late as 1946, in the case of Colegrove v. Green, the U.S. Supreme

Court denied relief to Illinois residents challenging a congressional districting plan that gave one district nine times the population of another. In dismissing the challenge, the Court held that malapportionment was not "justiciable"--i.e., not appropriate for judicial remedy. "The Courts," said Justice Felix Frankfurter in presenting the Colegrove majority opinion, "ought not to enter this political thicket."

In 1962, however, in a dramatic turnabout, the U.S. Supreme Court took jurisdiction over complaints against malapportionment. The landmark decision was handed down in Baker v. Carr, a case in which urban residents of Tennessee contested the makeup of the rurally controlled state legislature and the legislators' failure to reapportion since 1901. Reversing the Colegrove decision, the Supreme Court ruled that complaints against malapportioned legislatures were indeed justiciable.

The Court refused, however, to specify what levels of population disparity would be constitutional as it remanded the case to a lower federal court. It was not until 1964, in the cases of Wesberry v. Sanders and Reynolds v. Sims, that the Supreme Court began the development of population standards. Wesberry struck down Georgia's congressional districting plan, holding that "as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's." In Reynolds, the Court ruled that legislative districts for both houses of a bicameral state legislature must be "based substantially on population."

Baker, Wesberry, and Reynolds produced a flurry of citizen suits challenging malapportionment in state legislatures, and suddenly there were frenzied efforts in many states to make up for the half-century in which the apportionment problem had been neglected. By March 1964, 26 states had approved new apportionment plans. Alabama, Oklahoma, and Tennessee were redistricted under court-drafted plans; several states redistricted under court threats to postpone elections or to force all legislators to run for reelection at large rather than in their old districts. In Delaware, a court order gave the legislature 12 days to reapportion; Wisconsin was given 19 days, and Michigan 33 days. Faced with these examples of judicial severity, most states undertook to reapportion "voluntarily."

By 1966, legislatures in 46 of the 50 states had brought their apportionments into compliance with the new judicial standards of population equality. In a few states, reapportionment had been handed over to specially created commissions established by statute or by constitutional amendment. In some states, too, constitutional provisions requiring geographic or other modifications to population-based apportionments were abandoned or amended. Elsewhere, states created multimember districts in order to meet population requirements while at the same time preserving the boundaries of traditional political subdivisions in their districting systems. A number of states actually changed the size of their legislatures in order to accommodate population-based apportionments.

Although in the period 1963-65 there were movements in both Congress and the states to limit the effect of the court decisions on apportionment, these movements faltered and ceased by the late 1960s. By that time nearly all the state legislatures were effectively based on equal population, and there was no longer any impetus in the movement to resist "one man-one vote."

The Warren Court had given a remarkable demonstration of judicial power: 19

The problem of legislative malapportionment, and the associated phenomena of rural overrepresentation and urban-suburban underrepresentation, had been remedied in little more than half a decade. Yet, as is so often the case, the solution itself generated new difficulties.

The collapse of traditional districting arrangements and the emphasis on population equality, combined with the availability of new computer technology, yielded unexpected opportunities for politicians. "One man-one vote" was hardly a cure-all for gerrymandering (redistricting for partisan or other political advantages); and soon districts designed to maximize political advantage, within the confines of population equality, became all too common. The first response of the Supreme Court was to make the requirement for population equality even more stringent, as if more precise equality would check the reach for political gain. Thus, in Swann v. Adams and Kirkpatrick v. Preisler, the Court struck down districting plans that at any earlier period would have been considered impeccably "equal." This approach, however, produced a further escalation of the competition for political advantage in redistricting. Legislative majorities used the judicial emphasis on exact equality as a justification for drawing bizarrely shaped districts that cut across county and other subdivision boundaries. Challengers, pursuing different political objectives, authored their own slightly more "equal" gerrymanders. Gradually, the courts were forced to realize that equality was not a check on but a stimulus to gerrymandering.

The Supreme Court began to signal a new approach in 1973. The apparently inconsequential distinction in the Court's earlier decisions between state legislative districts, which were to be "based substantially on population," and congressional districts, which were to be as nearly equal "as is practicable," now became critical. In a congressional districting case from Texas, White v. Weiser, the Court favored a plan so closely based on population that the largest district in the state had only about 400 more persons than the smallest district. "Equality" in congressional districting thus appeared to be almost an absolute requirement. In two cases involving the districting of state legislatures, however, the Court began to permit greater flexibility in the interpretation of the meaning of "equality." In the first case, Mahan v. Howell, a redistricting plan was upheld for the Virginia state legislature in which the population variance between the largest and the smallest district was 16.4 percent. In the second case, Gaffney v. Cummings, Connecticut's 1971 redistricting plan for the state legislature was upheld despite a population deviation of 7.83 percent between the largest and smallest districts.

The Court's new approach to state legislative redistricting was hailed by commentators as marking a more mature and realistic perspective on the wide range of factors involved in districting. In Mahan, for example, the Court permitted Virginia's large deviations in district size on the grounds that the state had attempted to maintain the "integrity of political subdivisions lines," balancing the benefits of equal-population districting with the benefits of enhancing the role of local governments in state politics. In the same spirit, the smaller but still significant population variances upheld in Gaffney were justifiable to the Court in light of Connecticut's effort to bring about "proportional representation" of the two major parties in the state's legislature (i.e., representation for each party in proportion to its share of the total vote cast in legislative contests).

In relaxing the strict standards of exact mathematical equality, the Court was permitting the states to exercise discretion in selecting the factors, beyond population, that would be involved in their own legislative redistrictings. Yet, the

Court's new approach was clearly open to criticism by those who feared that "minor deviations in mathematical equality"--which will be allowed in the next round of redistricting, in the 1980s--provided an open invitation to legislators to gerrymander with impunity.

Perhaps the most reasonable conclusion to be reached from the first two decades of major redistricting litigation is that the central problems of redistricting for the most part remain unresolved. The courts rightfully provided relief to the geographical, economic, and political interests that had been gerrymandered out of political power by the malapportioned congressional, state legislative, and local governmental districts of the first half of this century. Unfortunately, the courts have been either unwilling or unable to remedy the other, less obvious forms of partisan, bipartisan, or racial gerrymandering that continue to threaten our representative system. Indeed, the courts, at least to date, have assiduously avoided any direct confrontation with these more insidious forms of gerrymandering, preferring instead to tighten or relax the criteria of population equality as an indirect approach to the problem.

It is unlikely that the 1980s will see any major shift in the Supreme Court's approach to redistricting law. The techniques of gerrymandering have kept well abreast of the courts' twists and turns, and with each successive redistricting experience the political process has become more sophisticated and complex. This is not to suggest that the courts will not play a significant role in the redistrictings of the 1980s; it does appear, however, that at least the U.S. Supreme Court may wish to heed Justice Frankfurter's advice and refrain from going any further into the "political thicket" of redistricting.

Politicians and Redistricting

If it teaches us anything, the history of reapportionment and redistricting in the United States should warn us that redistricting is far more than a routine and disinterested exercise in redrawing maps. Where the lines are drawn--and there are always a great many choices--affects the careers of incumbents and the future opportunity of challengers, the party balance in Congress and the state legislatures, the representation of minority groups, and even the role of local governments in state and national politics. It is not an exaggeration to suggest that where the lines are drawn after each federal census will shape government for the decade to come.

In most states, of course, the task of drawing new congressional and state legislative district lines is the responsibility of the state legislators themselves. Just how the incumbents view the redistricting process is well illustrated by a story (probably apocryphal) that concerns the redistricting of one particular state legislature. All the incumbents of both parties in the legislature were concerned about the political future of a long-time lawmaker known affectionately as "Old Joe." When the redistricting committee recessed for the first time, several legislators approached a committee member to inquire as to how Joe's district was being reshaped. "How's Old Joe doing?" they asked. "Fine," was the reply. At each recess, legislators made the same inquiry, and each time the answer was the same. Then, during a later recess, a concerned lawmaker asked the usual question of the committee member: "How's Old Joe doing?" "To hell with Old Joe," came the reply. "They are talking about my district."

In most states, redistricting plans proceed through the legislative process in much the same way as any piece of legislation. The details of the plan are usually

prepared by a committee whose membership is determined by the majority-party leaders, and the bill is approved by a simple majority vote of the full legislature. To become law, it must be signed by the chief executive of the state, and it is vulnerable to his veto.

Not surprisingly, political considerations play a major part in the process. Individual legislators struggle to maintain their incumbencies by drawing "safe" districts; legislative leaders seek to strengthen their positions by rewarding supporters with improved district boundaries or by punishing their opponents with "competitive" districts; majority parties develop plans to perpetuate their majority status and to shelter their members from unfriendly political winds in the future. Gerrymandering is widely, almost universally, practiced.

The basis of all gerrymanders is the effort of officeholders to perpetuate or add to their power in the legislature. There are two main types of gerrymander: (a) the bipartisan, or "incumbent survival," plan; and (b) the partisan, or "majority party," plan. In bipartisan gerrymanders, the aim is simply to ensure the reelection of incumbent legislators, generally by adding to the number of their party registrants within their districts. The telltale signs of such a gerrymander are increased majorities for all or most incumbents, a reduction in two-party competition, or even the elimination of electoral challenges in many districts.

The partisan gerrymander, for its part, aims to maintain or add to the number of seats held by the majority party. The basic technique is to waste votes for the opposition party. This may be achieved by concentration of the voters of the minority party in as few districts as possible: these districts will then produce huge majorities for minority-party representatives, but at the price of preventing or severely limiting effective minority-party competition in other districts. Alternatively, the wasting effect may be achieved by dispersal of the voters of the opposition party: by dividing up concentrations of minority-party strength among a number of districts (while at the same time assuring that the minority voters will always fall short of a majority in these districts), the majority party wins additional seats. Another technique sometimes used in partisan gerrymanders is the establishment of multimember districts that have the effect of submerging the voting strength of minority parties. The telltale sign of a partisan gerrymander is that the percentage of the seats held by the majority party in the legislature is significantly higher than its percentage of the two-party vote in the preceding election.

Partisan gerrymanders put majority-party leaders to a severe test, for such redistricting plans typically require some incumbents of the majority party to accept a reduction in their electoral "margins of safety" in order to build up majorities in neighboring districts; i.e., some of an incumbent's loyalist voters must be removed from his district in order to increase the chances for a party victory in a neighboring district. Party leaders must find inducements to win the support of such incumbents for the party's redistricting plan: Promises may be made of funds or other assistance in the next election; or the party leaders may make commitments on future legislation or promises of patronage. If a leader fails to make appropriate concessions, rivals for the leadership position may pick up support from the threatened incumbents.

The task of the minority-party leadership is no less demanding in the case of an attempted partisan gerrymander, for they must find ways to counter the attractive offers made to some minority-party incumbents of "safe" districts in

exchange for their support of the majority-party plan. Frequently, in legislatures where the margin of majority control is slim, redistricting will involve a complex process of deals, offers, and counteroffers as each party leadership tries to hold its own party members in line in support of one plan and opposition to other plans.

Occasionally, the retirement or death of a legislator will ease the way to agreement on a final plan, as his district may be freely dismembered and the pieces distributed in such a way as to please incumbents from the surrounding districts. In such a circumstance, the political vultures are quick to swoop down on the district of their absent colleague.

Of course, if a redistricting involves intense bargaining and counterbargaining, a shrewd incumbent who is willing to risk charges of party disloyalty may benefit from the process simply by constantly raising his bid to improve his own district. In some cases, the majority party finds itself unable to carry its plan through the legislature, or finds its plan blocked by the veto of a governor who represents the opposition party. Then redistricting may become even more controversial; typically, the problem is resolved only by court intervention (the classic example here may be the California redistricting of 1971-73, which pitted the vetoes of Republican Governor Reagan against the sizable Democratic majorities in both houses of the legislature).

A review of the essays in this volume, however, points up the fact that complaints about partisan redistricting may be overdrawn. In approximately one-half of the states, the dominance of one party is so great that "partisan" redistricting would be superfluous. In such states, the redistricting process is an intraparty contest, between liberals or moderates of one party and conservatives within the same party (e.g., Texas and New Hampshire), or between rural legislators and urbanites (e.g., Kansas), or between representatives from various geographical divisions of the state (e.g., east vs. west in South Dakota, or "upstate" vs. "low state" in South Carolina).

Finally, it must be emphasized that very often the redistricting process is characterized by great camaraderie among legislators of both parties. This is a phenomenon that outsiders--private citizens and nonofficeholding party activists--may find puzzling, but the explanation is rather simple. Legislators share a common identity: They are all politicians. As such, they experience similar political dilemmas even though their rhetoric may present them as rivals. Moreover, ease of cooperation among them is facilitated by their similar problems: The Republican may have too many Democrats in his district, while the Democrat finds himself with too many Republicans. What better situation for bargaining and exchange, especially if someone--the boss, the media, or the public--is not watching?

The ability of party leadership groups and incumbents to shape state politics for a decade through redistricting has given rise in recent years to demands for a nonpartisan redistricting procedure, with the emphasis usually on some form of commission plan. Reformers charge that there is an inherent conflict of interest in allowing state legislators to draw districting plans; they call for a solution that would take redistricting out of the hands of the incumbent legislators and turn it over to a bipartisan or nonpartisan redistricting commission. Active and successful in the late 1970s, currently the movement for redistricting reform appears to have stalled. Yet, as the next round of redistricting is carried out in the early 1980s, the movement is likely to resurface in a number of key states.

It should be pointed out that supporters of the prevailing legislative redistricting procedure, in opposition to the reformers, argue that the creation of districts is an inherently political process. Proposals for nonpartisan redistricting, they say, would merely cloak the politics of the process. So-called "nonpolitical" or "nonpartisan" commissions would be drawn willy-nilly into politics: The drawing of district boundaries cannot but involve political judgments and political results. But such commissions, to the extent they are artificially isolated from the political system, would be unable to accommodate and respond appropriately to political pressures. The argument concludes that this is the task of the legislature, a body that is supremely qualified to balance interests and to compromise among different groups.

Redistricting in the 1980s

The 1960s produced the beginnings of a "reapportionment revolution" in virtually every state of the Union, and the 1970s saw that revolution carried forward. While the print and electronic media gave much coverage to the courtroom battles of the sixties and seventies, the actual redistricting processes in these years attracted relatively little public attention. This may be explained partly by the technical character of the process and the difficulty of interpreting it to the general public. In part, too, the relative lack of attention was due to the success of many legislatures in restricting public involvement in and understanding of the process.

It is likely that the redistrictings of the 1980s will receive more critical scrutiny from the media, and from a wide variety of interest groups as well. In fact, one may safely predict that in the time remaining before redistricting, we will see a mounting controversy over the law, politics, and technology of redistricting. The reason for this controversy is obvious: the redistricting plans that are finally written—whether by state legislatures or by commissions, or as the result of a complex bargaining process involving many official and unofficial participants—will shape government for a decade.

Many different groups have already been alerted to their stake in redistricting, whether their stake be in the contours of individual districts, in the outcomes of an entire plan, or in the choice that is made between legislative and nonlegislative processes. Minority spokesmen, for example, typically claim that "fair representation" requires districts that will elect members of their own minority group. In line with such claims, blacks will certainly lobby in the 1980s, as they did in the previous decade, for districts that will increase the number of black congressmen and state legislators. In the states of the Southwest, Mexican-Americans have shown a determination to secure more districts that will elect Mexican-Americans to national and state offices. The essays in this volume also make it abundantly clear that other racial and ethnic groups have legitimate claims to representation—the Indians in Arizona and South Dakota, the Puerto Ricans in New York and New Jersey, the Poles in Chicago, Detroit, and Cleveland, the Hassidic Jews in New York City.

Many business groups will probably seek to influence the next redistrictings. Throughout the seventies, the legislative majorities in a number of states were highly critical of business and industry, and undoubtedly the representatives of business will not wish to see these majorities perpetuated via the redistricting process. Likewise, urban interests will certainly fight in many states to retain political power that would otherwise be transferred in redistricting from the

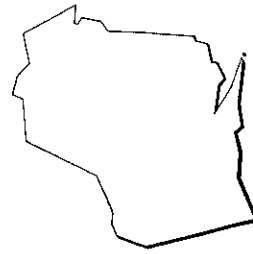
declining cities to the growing populations of the suburbs.

The prospect for the 1980s, then, is for many unexpected alliances—for example, between business groups and minorities—on the redistricting battlefield. With the high stakes at risk, a number of state legislatures and state party organizations are now devoting more resources to developing the extensive political/demographic data bases so critical to redistricting decisions. The new computer technology—which was used in only a few states in the late 1960s and early 1970s—is certain to be more widely applied in the 1980s. Unfortunately for legislators and party loyalists, however, sophisticated computer technology is now available to many different groups, and it is likely that legislatures will find their plans subjected to almost instant analysis by interested parties that have developed their own data bases and retrieval systems. Indeed, using today's computer technology, it is possible to analyze an entire redistricting plan, even for a large state, in as little as 24-48 hours. Certainly this is not going to make any easier the task of the legislators of devising a redistricting plan that will stand up to scrutiny by many interest groups, by the public at large, and by the state and federal judiciary.

In short, the redistrictings of the 1980s promise great controversy in many of the 50 states. The editors of this volume hope that the essays which follow will provide a perspective for all interested parties on redistricting and its vital importance in the American political system. In moments of great optimism, the editors even hope that these essays will make some contribution toward bringing America closer to a system of representative government in which all citizens are given just and fair representation.

WISCONSIN

A. Clarke Hagensick



Reapportionment in Wisconsin, as in most states, has produced several tempestuous battles during the past three decades. Unlike many other states, however, these battles did not occur solely because of the series of U.S. Supreme Court cases beginning with Baker v. Carr. A major fight over legislative redistricting in the 1950s revolved around state constitutional interpretation. In the 1960s, divided partisan control of state government precipitated a stalemate ultimately broken by the Wisconsin Supreme Court. By comparison, redistricting in the 1970s was largely anticlimactic, as governor and legislature rose above partisanship to protect incumbents and ward off further intervention by the courts. It is likely that the scenario of the 1970s will be largely repeated when the maps are redrawn on the basis of the 1980 census.

Ground Rules and Battle Lines

The Wisconsin state constitution sets forth the following standard governing the apportionment of legislative districts:

At their first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants, excluding soldiers and officers of the United States army and navy.

This population basis for both houses of the legislature has prevailed since Wisconsin became a state in 1848. ^{1/} Responsibility for the task of redistricting clearly lies with the legislature through the normal lawmaking process. Thus, the governor is involved in redistricting through his authority to sign or veto legislation passed by the two houses. (There have been numerous suggestions to establish a reapportionment commission or some other body apart from the legislature to handle redistricting, but such suggestions have come to naught.) The constitution also requires single-member districts, with "such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable."^{2/} In addition, the state Supreme Court in 1892 decreed that individual counties could be divided into two or more districts, or two or more entire counties could be combined as one district, but Assembly districts could not include parts of one county joined to another county or portion of another county.^{3/} These requirements necessarily modified somewhat the strict application of the population criterion.

Assembly districts cannot be split in forming Senate districts. The prevailing

pattern is that three Assembly districts make up a Senate district. There was always a slight deviation in the three-to-one formula, however, since traditionally the state Assembly had 100 seats while the state Senate had 33. Thus, under any districting scheme at least one Senate district would contain four Assembly districts.

The legislature dutifully reapportioned after each census until 1941, when it failed to take action based on the 1940 census. Thus by 1951 there had been a lapse of 20 years from the last reapportionment—a 20-year period which included the Great Depression, the New Deal, World War II, and the postwar recovery, with all of the population shifts attendant upon those momentous events. Milwaukee, Madison, and other urban centers generally gained population in these years in relation to the rural areas of the state. From 1900 to 1950 the percentage of the state's population defined as urban increased from 38.2 percent to 55.5 percent. (That trend has continued; by 1970 the urban population had reached 65.9 percent. It is probably about 70 percent at present.)

Several important demographic and political cleavages have long influenced deliberations on reapportionment in Wisconsin. The urban/rural rivalry has been one—especially in light of the continual population shifts between those two sectors noted above. Typically, rural interests have been cast in the role of defending the status quo against the claims for increased representation by the growing urban areas.

Clearly, partisan competition has also been a major factor in Wisconsin reapportionment fights. Dating from 1946, when the Wisconsin Democratic party was "born again" in the wake of the demise of the Progressive party, Wisconsin has moved to a strongly competitive two-party system. The test of strength between the two major parties has had some, but not total, correlation with the urban/rural contest. On the basis of size of place, Republicans have been strongest in the small-to medium-sized villages and cities in the state (up to 50,000 population); the Democrats, on the other hand, have been strongest in the cities with populations above 50,000—especially Milwaukee and Madison.

A third major influence on reapportionment, and again one that is related to the first two, is the city of Milwaukee's unique status as by far the largest and most prominent urban center in Wisconsin. This has fostered a tendency for political conflict to be structured as Milwaukee versus the rest of the state. Thus, some politicians may derisively refer to "the state of Milwaukee," while Milwaukeeans complain that the rest of the state is ganging up on them. In reapportionment battles a major focal point has often been the question of what Milwaukee would gain or lose under alternative approaches.

In both the 1950s and the 1960s, Wisconsin underwent tumultuous battles over reapportionment. In each decade the Wisconsin Supreme Court played a critical role in these battles. Of course, its involvement in the 1960s was buttressed by the landmark reapportionment decisions rendered by the U.S. Supreme Court. To be sure, many other political actors were also involved in the reapportionments of the fifties and sixties, but in each decade the state high court was the final arbiter.

The 1950s: State Court as Arbiter

In 1951, after the previously mentioned 20-year hiatus, the Wisconsin legislature adopted a reapportionment plan which included substantial changes in

legislative districts. Popularly known as the Rosenberry Act,^{4/} the plan basically adhered to population standards, except where influenced by the strictures noted above respecting jurisdictional boundaries. Milwaukee County went from 20 to 24 Assembly seats; Dane County (Madison) gained two seats; and five other counties, each containing a medium-sized city, gained one seat each. The big losers under this plan were rural counties in the northern and western portions of the state. The act was to take effect in 1954.

Concurrently, efforts were underway in the early fifties to amend the state constitution to incorporate an area factor into the determination of legislative districts. An advisory referendum posing that question was defeated by the electorate in November 1952. However, a constitutional amendment providing for consideration of area in Senate districting was approved by the electorate in April 1953. Both measures were pushed by Republican legislators. (At that time, Republicans had substantial majorities in each house of the legislature and also held the governor's office and all of the other elective offices statewide.) Following passage of the 1953 amendment, the legislature enacted a new redistricting plan consistent with the amendment provisions. Basically, this meant that the Rosenberry provisions would apply to Assembly districts, while the area factor was built into Senate districts. This latest plan was to be implemented in the 1954 state elections.

However, the secretary of state, a maverick Republican from Milwaukee, let it be known that he would ignore the new plan and call the 1954 election on the basis of the Rosenberry Act. Legal action was brought in the state Supreme Court to force the secretary to accept the new plan--which, after all, was based upon the recently enacted constitutional amendment. The Court upheld the secretary on the unusual grounds that the amendment was invalid.^{5/} Accordingly, the Rosenberry districting was used for the 1954 election and continued to be used for the rest of the decade. There was no further significant effort to reincorporate an area factor into redistricting in Wisconsin.

The 1960s: State Court as Draftsman

The 1950s were marked chiefly by Republican internecine warfare, as various factions of the majority party took conflicting positions on redistricting questions. In the next decade, by contrast, all-out partisan warfare between Republicans and Democrats was the dominant factor. From 1961 to 1965 Democrats held the governor's office, but both houses of the legislature were firmly in Republican hands. The result? A bruising redistricting battle that lasted for nearly four years.

Actually, the stakes in this redistricting controversy were rather small, since population changes in Wisconsin were not extensive between 1950 and 1960. The principal issue was the number of seats to be accorded to Milwaukee County. Democrats argued for a plan which would increase the county's representation from 24 to 26 seats. Republicans countered with the claim that it should remain at 24. Neither side could prevail in the exhausting round of legislative deliberations, gubernatorial vetoes, and litigation extending from early in 1961 through May 15, 1964. On the latter date, the state Supreme Court, acting on an earlier ultimatum which failed to compel action by the legislature and governor, promulgated its own legislative redistricting plan for use in the 1964 election--and thereafter, unless the legislature enacted a valid plan.^{6/}

The Court plan gave Milwaukee County 25 seats, thus effecting a compromise

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that the governor and legislature had been reluctant to make. While attempting to adhere closely to population criteria, the plan nevertheless followed the old rules respecting local boundaries and prohibiting the inclusion of part of a county with all or part of any other county. The result in mathematical terms was a redistricting which had considerable deviation from average district size. For example, in the Assembly the average deviation was ± 11.3 percent, with the largest district having a population 32.5 percent above the average and the smallest having a population 43.7 percent below the average. It is unlikely that this plan would have survived federal court scrutiny, but no challenge to it was brought in federal court.

The Supreme Court's 1964 plan also drew adverse political reaction. Many legislators, Republicans and Democrats alike, did not consider it sufficiently sensitive to the interests of incumbents. There were also some districts which offended political sensibilities in other ways. For example, the city of Glendale, a Milwaukee suburb with a population of just under 10,000, was divided among three Assembly and three Senate districts. Despite these concerns, however, the legislature took no action in its ensuing sessions to replace the court-ordered redistricting. It even failed in a modest effort to straighten out the Glendale situation.

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Two other redistricting actions of note occurred in the 1960s. The first was the redrawing of congressional district lines. Nothing had been done about those districts since 1931. By 1950, population discrepancies among the state's ten districts was considerable. The average deviation was almost ± 15 percent, and the largest and smallest districts were close to 30 percent away from the average. Although congressional districting was affected by many of the same partisan and factional considerations as legislative districting, the legislature nevertheless enacted a congressional plan in 1963 which the governor found acceptable. The resulting districts were within a ± 3.5 percentage range.

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The second notable redistricting action produced a fundamental change in representation on Wisconsin county boards. The traditional pattern of representation within most counties (Milwaukee was the major exception) was to have one board member from each town, village, or city ward. Variations in population among these units were often immense, especially in counties with sizable cities. In 1965, the state Supreme Court struck down the prevailing pattern as a violation of equal protection.^{7/} Thus, the Wisconsin Court anticipated the U.S. Supreme Court's decision of 1968 by extending the principle of "one man-one vote" to local elective boards.^{8/}

The 1970s: Supremacy of "One-Vote" and Incumbency

In 1971, divided partisan control again characterized Wisconsin state government. A Republican majority in the state Senate counterbalanced Democratic control of the governor's office and the lower house. The framework for another deadlock was present, and in fact the legislature recessed in March 1972 without having enacted a redistricting bill. Armed with its own 1964 precedent and with the knowledge of the evolved federal standards regarding reapportionment, the state Supreme Court acted quickly. It again imposed a deadline, April 1972, for legislative action on redistricting. The obvious implication was that the Court would again do the job itself if the legislature failed to act. The legislature responded by adopting its own redistricting plan at a special session in April.

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The 1972 legislative redistricting was a bipartisan effort. It adhered scrupu-

lously to one man-one vote standards, in that no district, Assembly or Senate, deviated by as much as one percent from the norm of absolute equality of population among districts. The plan's bipartisanship was reflected in the fact that it protected incumbents. To the extent possible, it avoided putting incumbents into the same district, and in general it strengthened the partisan advantages for the greatest number of incumbents, whether Democratic or Republican.

To accomplish these results a number of fundamental changes were made in the traditional redistricting ground rules. First, the legislature's plan reduced the Assembly from 100 seats to 99, thus ensuring that each Senate district would consist of three, and only three, Assembly districts. Second, the plan ignored the traditional rule forbidding the joining of a part of one county with all or part of another county. In some cases, it brought pieces of as many as five counties into a single district. Third, within Milwaukee County the plan redefined the smallest electoral units as "wards," so that maximum flexibility would be present in following the constitutional dictum that districts should follow ward lines. The state high court refused to hear a suit challenging this apportionment, in effect upholding its provisions.^{9/}

As regards the substance of the 1972 plan, the long-term trend of declining representation of rural areas continued with this reapportionment. However, for the first time in this century, and perhaps since statehood, Milwaukee's representation also declined. From its high of 25 seats in the 1960s, the Milwaukee County delegation was reduced to the equivalent of somewhat less than 24 seats. (Exact comparisons are difficult because two of the districts included territory in adjoining counties.) The primary beneficiaries of the redistricting plan were suburban counties surrounding Milwaukee.

Congressional redistricting was enacted by the legislature with relative ease in 1971. Since the state's congressional delegation was reduced from ten seats to nine on the basis of the 1970 census, redistricting was imperative. A plan produced by two congressmen--a Democrat and a Republican--was generally acceptable to the other incumbent congressmen from the state. Like the legislative redistricting, this plan drew criticism because of its alleged emphasis on protecting the interests of incumbents. Evidence from the elections during the decade supports the allegation. In only two of the nine districts were there changes in party control, and in most of the others incumbents consistently won more than 60 percent of the vote.

Redistricting in the 1980s

As in the last two redistricting controversies, Wisconsin in 1981 will once again have divided partisan control of its state government. The present Republican governor's term extends through 1982. In the November 1980 elections, Democrats retained majorities in both legislative chambers: 60-39 in the lower house and 19-13 in the state Senate. These majorities fall far short in either house of the two-thirds majority necessary to override a gubernatorial veto.

Thus, it is reasonable to expect that there will be considerable partisan fireworks as both Republicans and Democrats push for their preferences on redistricting. However, the spectre of judicial intervention is likely to make compromise palatable. The threat of court-drawn district lines clearly convinced governor and legislature to reach agreement in 1972. The same is likely in 1981.

It is also safe to assume that in any ultimate compromise, high priority will be

given to the political interests of incumbents. That was a clear pattern in both legislative and congressional redistricting in the 1970s, and it is likely to occur again.

The U.S. Supreme Court's decision in 1972 that state legislative districts did not need to meet as rigorous population criteria as congressional districts should make it easier to arrive at an acceptable plan for redistricting.¹⁰ It should also reduce the number of districts formed by bits and pieces of several counties, which was a characteristic of Wisconsin's 1972 effort.

The trend, begun in the 1970s, of declining Milwaukee representation will in all probability continue in the 1980s. It is apparent that the city of Milwaukee's decline in population--in both absolute and relative terms--will translate into a loss of two or possibly three Assembly seats. Once again, the adjoining suburban counties will be most likely to receive additional districts.

Congressional redistricting will be subject to the same political forces as those outlined above. However, it is unlikely that the state's number of congressmen will change as a result of the 1980 census. Hence the changes in district lines will be marginal, and not the wrenching changes that usually accompany the loss of one or more seats.

NOTES

1. Wisconsin, Constitution, art. IV, sec. 3. Only minor changes have been made in this provision since 1848. In 1910 the requirement that redistricting be done at the first session after the federal census was specified. In 1961 the exclusion of "Indians not taxed" was removed from the reapportionment formula.
2. *Ibid.*, secs. 4, 5.
3. *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440 (1892).
4. Marvin B. Rosenberry, a former chief justice of the Wisconsin Supreme Court, chaired the Legislative Council committee which developed the plan.
5. *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 60 N.W.2d 416 (1953). The amendment was declared void largely on technical grounds. In addition, the Court decided that the second plan could not stand in any case because the legislature had exhausted its reapportionment powers for the 1950s with its passage of the earlier Rosenberry Act.
6. *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551; 23 Wis. 2d 606, 128 N.W.2d 16 (1964).
7. *State ex rel. Sonneborn v. Sylvester*, 25 Wis. 2d 177, 130 N.W.2d 569 (1965).
8. *Avery v. Midland County*, 390 U.S. 474 (1968).
9. *Seefeldt et al. v. Zimmerman*, 55 Wis. 2d 766 (1972).
10. *Mahan v. Howell*, 35 L. Ed. 2d 320 (1973).